



Anti-Money Laundering and Counter-Terrorism Financing Amendment Regulations 2011 (No. 1)¹

Select Legislative Instrument 2011 No. 228

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 7 December 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

BRENDAN O'CONNOR
Minister for Justice

1 Name of Regulations

These Regulations are the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Regulations 2011 (No. 1)*.

2 Commencement

These Regulations commence on 1 March 2012.

3 Amendment of *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008*

Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008*.

Schedule 1 Amendments

(regulation 3)

[1] Before regulation 1

insert

Part 1 Preliminary

[2] Regulation 3, at the foot

insert

Note Several other words and expressions used in these Regulations have the meaning given by section 5 of the Act. For example:

- AML/CTF Rules
- anti-money laundering and counter-terrorism financing program
- designated service
- person
- reporting entity
- resident
- transaction.

[3] After regulation 3

insert

Part 2 Designated services

[4] After regulation 4

insert

Part 3 Transactions relating to Iran

Note 1 Section 103 of the Act provides that section 50 of the *Legislative Instruments Act 2003* has effect in relation to regulations made for subsection 102 (1) of the Act as if each reference in that section to tenth anniversary were read as a reference to second anniversary.

Note 2 Section 50 of the *Legislative Instruments Act 2003* provides for the sunseting of regulations calculated by reference to the tenth anniversary of the day they are required to be lodged for registration in accordance with section 29 of that Act.

5 Definitions for Part 3

In this Part:

Department means the Department that deals with external affairs.

Secretary means the Secretary of the Department.

6 Declaration of prescribed foreign country

Iran is declared to be a prescribed foreign country for the Act.

7 Prohibition

- (1) A transaction is prohibited if:
- (a) it is a transaction that involves the provision of one or more designated services by a reporting entity; and

- (b) the reporting entity is aware, or ought reasonably to be aware, at the time of the transaction, that a party to the transaction is:
 - (i) an individual who is physically present in Iran; or
 - (ii) a corporation incorporated in Iran; and
 - (c) the transaction involves the provision of one or more of the services mentioned in items 17, 29, 30, 31, 32 or 34 of table 1 in section 6 of the Act; and
 - (d) the value of the money or property involved in the transaction is not less than \$20 000; and
 - (e) none of the parties to the transaction is:
 - (i) the Commonwealth, a State or Territory; or
 - (ii) a person exempted under regulation 9; and
 - (f) the transaction does not relate to:
 - (i) the Iranian Embassy in Canberra; or
 - (ii) a member of the diplomatic staff of the Embassy who is entitled to any privileges or immunities under the *Diplomatic Privileges and Immunities Act 1967*; or
 - (iii) the head or member of staff of a consular post in Australia or an external territory operated by Iran who is entitled to any privileges or immunities under the *Consular Privileges and Immunities Act 1972*; and
 - (g) it is not exempt under regulation 8.
- (2) A reporting entity must not provide a designated service in relation to a prohibited transaction.

Penalty: 50 penalty units.

8 Transaction exemption

- (1) A person may apply for a transaction to be exempt from regulation 7.
- (2) The application must be made to the Department in a form approved by the Secretary.

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- (3) The Secretary may exempt a transaction from regulation 7 if the Secretary considers it appropriate to do so having regard to:
- (a) the objects of the Act; and
 - (b) whether the transaction is necessary for the provision of a basic expense, including the following:
 - (i) foodstuffs;
 - (ii) rent or mortgage;
 - (iii) medicines or medical treatment;
 - (iv) taxes;
 - (v) insurance premiums;
 - (vi) public utility charges;
 - (vii) reasonable professional fees;
 - (viii) reimbursement of expenses associated with the provision of legal services; and
 - (c) whether the transaction is legally required because it is necessary to satisfy a judicial, administrative or arbitral lien or judgment that was made before 1 March 2012; and
 - (d) whether the transaction is contractually required under a contract, agreement or obligation made before 1 March 2012; and
 - (e) whether the transaction is a significant trade transaction that, if not completed, would have an adverse effect on Australian's trade relationship with Iran or the viability of an Australian business; and
 - (f) whether the transaction is a humanitarian transaction related to the provision of aid or humanitarian services.
- (4) The Secretary is taken to have exempted the transaction if:
- (a) the Secretary does not give the person written notice of a decision under subregulation (3) within 28 days after the application is made and paragraph (b) does not apply; or
 - (b) both:
 - (i) within 28 days after the application is made, the Secretary gives the person written notice that the application is still being considered; and

- (ii) the Secretary does not give the person written notice of a decision under subregulation (3) within 56 days after the application is made.

9 Personal exemption

- (1) A person may apply for exemption from regulation 7.
- (2) The application must be made to the Department in the form approved by the Secretary.
- (3) The Secretary may exempt a person from regulation 7 if the Secretary considers it appropriate to do so having regard to the objects of the Act.

Note 1 Section 5 of the Act defines *person* to mean:

- (a) an individual;
- (b) a company;
- (c) a trust;
- (d) a partnership;
- (e) a corporation sole;
- (f) a body politic.

Note 2 Sections 237, 238 and 239 of the Act provide for the application of the Act to partnerships, unincorporated associations and trusts (with 2 or more trustees) as if they were persons, but subject to the changes set out in those sections.

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.